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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Belarus, Costa Rica, Cyprus, India, Mongolia, Morocco, Nigeria, Peru, Russian Federation and Ukraine: draft resolution

National institutions for the promotion and protection of human rights

The General Assembly,

Recalling the relevant resolutions concerning national institutions for the protection and promotion of human rights, notably its resolutions 41/129 of 4 December 1986 and 46/124 of 17 December 1991 and Commission on Human Rights resolutions 1987/40 of 10 March 1987, 1988/72 of 10 March 1988, 1989/52 of 7 March 1989, 1990/73 of 7 March 1990, 1991/27 of 5 March 1991, 1992/54 of 3 March 1992 and 1993/55 of 9 March 1993,

Emphasizing the importance of the Universal Declaration of Human Rights, 1/ the International Covenants on Human Rights 2/ and other international instruments for promoting respect for, and observance of, human rights and fundamental freedoms,

Affirming that priority should be accorded to the development of appropriate arrangements at the national level to ensure the effective implementation of international human rights standards,

Convinced of the significant role that institutions at the national level can play in promoting and protecting human rights and fundamental freedoms and in developing and enhancing public awareness of those rights and freedoms,

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1/ Resolution 217 A (III).

2/ Resolution 2200 A (XXI), annex.

Recognizing that the United Nations can play a catalytic role in assisting the development of national institutions by acting as a clearing-house for the exchange of information and experience,

Mindful in this regard of the guidelines on the structure and functioning of national and local institutions for the protection and promotion of human rights endorsed by the General Assembly in its resolution 33/46 of 14 December 1978,

Welcoming the growing interest shown world wide in the creation and strengthening of national institutions expressed during the Regional Meeting for Africa of the World Conference on Human Rights, held at Tunis from 2 to 6 November 1992, the Regional Meeting for Latin America and the Caribbean of the World Conference on Human Rights, held at San José from 18 to 22 January 1993, the Regional Meeting for Asia of the World Conference on Human Rights, held at Bangkok from 29 March to 2 April 1993, the Commonwealth Workshop on National Human Rights Institutions, held at Ottawa from 30 September to 2 October 1992 and the Workshop for the Asia and Pacific Region on Human Rights Issues, held at Jakarta from 26 to 28 January 1993, and manifested in the decisions announced recently by several Member States to establish national institutions for the promotion and protection of human rights,

Recalling the Vienna Declaration and Programme of Action, 3/ which reaffirmed the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights,

Noting the diverse approaches adopted throughout the world for the protection and promotion of human rights at the national level, emphasizing and recognizing the value of such approaches to promoting universal respect for, and observance of, human rights and fundamental freedoms,

1. Takes note with satisfaction of the updated report of the Secretary-General on national institutions for the protection and promotion of human rights, prepared in accordance with General Assembly resolution 44/64 of 8 December 1989;

2. Reaffirms the importance of the development, in accordance with national legislation, of effective national institutions for the promotion and protection of human rights and of ensuring the pluralism of their membership and their independence;

3. Encourages Member States to establish or, where they already exist, to strengthen national institutions for the protection and promotion of human rights and to incorporate those elements in national development plans;

3/ A/CONF.157/24.

4. Also encourages national institutions for the promotion and protection of human rights established by Member States to prevent and combat all violations of human rights as enumerated in the Vienna Declaration and Programme of Action and relevant international instruments;

5. Requests the Centre for Human Rights to continue its efforts in order to enhance cooperation between the United Nations and national institutions, particularly in the field of advisory services, and technical assistance and of information and education, including within the framework of the world public information campaign for human rights;

6. Also requests the Centre for Human Rights to establish, upon the request of States concerned, United Nations centres for human rights documentation and training, and to do so on the basis of established procedures for the use of available resources within the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights;

7. Requests the Secretary-General to respond favourably to requests from Member States for assistance in the establishment and strengthening of national institutions for the protection and promotion of human rights as part of the programme of advisory services and technical cooperation in the field of human rights, as well as national centres for human rights documentation and training;

8. Encourages all Member States to take appropriate steps to promote the exchange of information and experience concerning the establishment and effective operation of such national institutions;

9. Affirms the role of national institutions as agencies for the dissemination of human rights materials and other public information activities prepared or organized under the auspices of the United Nations;

10. Welcomes the organization under the auspices of the Centre for Human Rights of a follow-up meeting in Tunis in December 1993 with a view, in particular, to examining ways and means to promote technical assistance for the cooperation and strengthening of national institutions, and to continue to examine all issues relating to the question of national institutions;

11. Welcomes the "Principles relating to the status of national institutions", annexed to the present resolution;

12. Encourages the establishment and strengthening of national institutions having regard to these principles and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level;

13. Requests the Secretary-General to report to the General Assembly at its fiftieth session on the implementation of the present resolution.

Annex

Principles relating to the status of national institutions

Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

(i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

(b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

(e) Government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

(a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

(b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

(c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

(d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;

(e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

(f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);

(g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

(a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

(b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

(c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

(d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.